

In the Matter of:)
)
Application for)
Certification for the) Docket No. 02-AFC-1
BLYTHE ENERGY PROJECT II)
(Blythe Energy, LLC))
)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Garrett Shean

STAFF AND CONSULTANTS PRESENT

Lisa De Carlo, Staff Counsel

William Pfanner, Project Manager

REPRESENTING THE APPLICANT

Scott A. Galati, Attorney
Galati and Blek, LLP

Thomas L. Cameron, Project Manager
Robert Looper, P.E., Project Director
Caithness Blythe II, LLC

Robert K. Holt
The Holt Group (via teleconference)

Christopher Ellison, Attorney

ALSO PRESENT

Les Nelson, City Manager
Charles Hull, Assistant City Manager
City of Blythe (via teleconference)

Pat Wolfe
Blythe Airport (via teleconference)

Bob Mooney
Desert Southwest Transmission

I N D E X

	Page
Proceedings	1
Introductions	1
Opening Remarks	1
Topics	3
Project Description	3
Air Quality	4
Alternatives	9
Biology	10
Compliance	15
Cultural Resources	16
Efficiency	19
Facility Design	20
Geology and Paleontology	20
Hazardous Materials	21
Land Use	24
Water Resources, Water Quality and Soils	28/35/72
Traffic and Transportation	46
Noise and Vibration	58
Public Health	59
Reliability	59
Socioeconomics	60
Transmission Line Safety and Nuisance	63
Transmission System Engineering	63

I N D E X

	Page
Topics - continued	
Waste Management	72
Worker Safety	76
Visual Resources	77
Scheduling	82
Evidentiary Hearing Dates	82
Applicant and Intervenor Testimony Filing	89
Public Comment	92
Closing Remarks	94
Adjournment	95
Certificate of Reporter	96

P R O C E E D I N G S

9:00 a.m.

PRESIDING MEMBER GEESMAN: This is the prehearing conference for the Blythe Energy Project II. I'm going to it immediately over to Mr. Shean.

HEARING OFFICER SHEAN: Thank you, Commissioner Geesman. At this point why don't we have the parties introduce themselves, and also ask if anyone is on the phone. Let me indicate we've received prehearing conference statements from the staff, the applicant and an intervenor.

And with that, we'll go to the Commission Staff.

MS. DeCARLO: Lisa DeCarlo, staff counsel.

MR. PFANNER: Bill Pfanner, project manager.

MR. LOOPER: Robert Looper representing Caithness Blythe II.

MR. GALATI: Scott Galati representing Caithness Blythe II.

MR. CAMERON: Tom Cameron representing Caithness Blythe II.

HEARING OFFICER SHEAN: Is anyone on the

1 phone?

2 MR. HOLT: Yeah, Rob Holt down in
3 Blythe, with the Holt Group. And City Manager
4 Nelson and Assistant City Manager Hull will be
5 stepping in momentarily here.

6 MR. WOLFE: You've also got Pat Wolfe
7 here from the Airport in Blythe.

8 HEARING OFFICER SHEAN: Thank you, Mr.
9 Wolfe. All right, what we propose to do is to go
10 through essentially the list that appeared on the
11 back of the notice of the prehearing conference;
12 determine first of all the parties' readiness to
13 go ahead with evidentiary hearings on that.

14 Whether an item is in dispute or not.
15 If it is in dispute, what the anticipated
16 testimony of the party is going to be. And the
17 expected length.

18 When we conclude all of that we're going
19 to get into establishing dates for evidentiary
20 hearings.

21 Is there anything that the parties want
22 to say preliminarily before we launch into this?
23 Okay, hearing nothing, we'll assume nothing.

24 All right, I have, and am working from,
25 essentially a table that was included in the

1 applicant's prehearing conference statement. And
2 a listing in the staff's prehearing conference
3 statement of its issues for which it wants to
4 present a witness. So is there any other
5 documentation we should be using?

6 And I'll also indicate for Ms. Carmella
7 Garnica, we have her submittal and we'll get to
8 that when we get to the socioeconomic issue. All
9 right?

10 Why don't we go first with project
11 description. I'm not necessarily going to go in
12 the order that these appear here, but probably
13 something close to the order that -- alphabetical
14 order they would appear in the PMPD.

15 And we have the applicant -- do you feel
16 you need to have a live witness to discuss this?

17 MR. GALATI: Actually, I think we would.
18 I think it would help the Committee to be able to
19 ask questions about the location of the project to
20 any of the project components that are not -- that
21 may be unclear. And also to provide a brief
22 explanation of why the project was sited where it
23 was.

24 So I've only allocated 20 minutes. I
25 think that's a -- we can do our presentation in

1 ten minutes, with ten minutes or so questions from
2 the Committee, should they have any.

3 We don't have any dispute with how staff
4 has written the project description. We just
5 wanted to provide a live witness. We normally do.

6 HEARING OFFICER SHEAN: All right, we'll
7 look at what the total time conception appears to
8 be and take that into account.

9 All right, let's go next to air quality.

10 And the applicant has indicated it has a dispute
11 with respect to a couple of conditions dealing
12 with construction phase air quality related mostly
13 to the imposition of watering requirements, I
14 think it was. Do you want to briefly describe
15 that, Mr. Galati?

16 MR. GALATI: Yes. Our first comment is
17 on condition AQSC-3, which requires specified
18 sweeping to remove dust at least twice daily or
19 less during periods of precipitation. Since with
20 the particular way the project is located, what
21 has happened on the project site, we think that
22 it's reasonable to require that kind of
23 specificity as necessary, since we are agreeing to
24 an air quality mitigation monitor onsite who can
25 direct how frequently that should be done.

1 So, we would ask that the staff accept
2 that very minor modification.

3 HEARING OFFICER SHEAN: All right, let's
4 hear from staff, and we'll have a few comments.

5 MS. DeCARLO: Because there are no
6 nearby sensitive receptors and there is no public
7 traffic on the construction access streets, we
8 would agree to the modification of AQSC-3.

9 HEARING OFFICER SHEAN: All right. The
10 fact that the applicant has raised this and others
11 of a similar nature, and you provided your
12 suggested modified language, the first thing that
13 arises in the Committee's mind is whether there
14 truly is a dispute of fact that requires that this
15 go to an evidentiary hearing.

16 I think hearing time in an evidentiary
17 proceeding is a very valuable thing. And to the
18 extent that there's not an actual dispute of fact
19 that suggests there be direct testimony and cross-
20 examination to test the truth of whether a face
21 does or doesn't exist, and if so, how it exists,
22 that we're better to use our time focused on that
23 than comments about wordsmithing and other things
24 like that that don't involve a specific dispute of
25 fact.

1 And there may be some others in here
2 that would go along with that. Now, I will
3 indicate for the record we had a suggestion by the
4 applicant and the staff before we went on the
5 record that perhaps after we have concluded this
6 prehearing conference, if there's time available
7 then the applicant and the staff could go through
8 matters that they may be able to reach agreement
9 on. And these conditions, such as the one in air
10 quality, may be exactly the kind of thing that
11 we're talking about.

12 So let me just indicate we would tend to
13 disfavor the idea of going over these in an
14 evidentiary proceeding in that way and using
15 evidentiary hearing time for things where disputes
16 of fact don't exist.

17 So, that's long enough.

18 MR. GALATI: Thank you. Should we not
19 be able to resolve some of these things, I think I
20 can establish the facts upon which a lot of these
21 changes are based in project description, such as
22 for example, in geology and paleontology, we have
23 the concept of previously disturbed. Same thing
24 with cultural.

25 I can establish what was on the site in

1 project description, and then we can handle these
2 wordsmithings in briefs. I just wanted to
3 preserve the right, should staff say there's an
4 unmitigated impact, that I can provide testimony
5 that the impact is mitigated by our suggested
6 language.

7 HEARING OFFICER SHEAN: Okay. Let's run
8 through the rest of these, then.

9 With that, we're going to show air
10 quality to be uncontested and take it by
11 declarations.

12 PRESIDING MEMBER GEESMAN: I think there
13 was an issue on AQSC-4, as well. We've gone
14 through AQSC-3. Did either party have anything
15 more to add on AQSC-4?

16 MR. GALATI: Nothing for the applicant
17 that's not in its brief.

18 MS. DeCARLO: We would not agree to the
19 modifications as proposed. We believe that a
20 condition is necessary to insure a minimization of
21 potential impacts.

22 I would also note that intervenor
23 Carmella Garnica has identified air quality as an
24 issue that she wants to at least submit testimony
25 on. I don't know if she would also request that

1 issue be heard, that staff present witnesses on
2 that issue.

3 HEARING OFFICER SHEAN: Okay, what --

4 PRESIDING MEMBER GEESMAN: There also
5 appears to be one on AQ-19.

6 MS. DeCARLO: Yes, staff does agree to
7 that modification. Apparently the paper FDOC that
8 we had was different than the final electronic
9 version.

10 PRESIDING MEMBER GEESMAN: Well, I want
11 to dispel any notion that either Mr. Shean or I am
12 not looking forward to evidentiary hearings in
13 Blythe in August.

14 (Laughter.)

15 PRESIDING MEMBER GEESMAN: But I do also
16 want to reiterate his comments about hopefully
17 some of these issues that may not require use of
18 evidentiary hearing time could be addressed in a
19 workshop after this conference.

20 MR. GALATI: We are amenable to that,
21 Commissioner.

22 HEARING OFFICER SHEAN: All right, we'll
23 hold an open spot for Ms. Garnica either to get on
24 the phone and tell us what she has in mind or at
25 least reserve some time for her to state whatever

1 it is she wishes to state.

2 MR. GALATI: Yes, since Ms. Garnica's
3 prehearing conference statement listed broad
4 issues such as air quality and not particular
5 issues with air quality, I need to reserve the
6 right to bring a witness to refute whatever her
7 witnesses may say.

8 So we intend to go by declaration. But
9 I would like to have the right to provide live
10 testimony should it be necessary.

11 HEARING OFFICER SHEAN: Okay, and I
12 think we'll do that for each of her topic areas if
13 we don't hear from her further this morning. All
14 right.

15 Let's go to alternatives. The applicant
16 indicates you request a witness, and this is to
17 address the staff's FSA comment that there are
18 preferable alternatives to the proposed site.

19 MR. GALATI: That's correct, and this is
20 integrally tied with the rest of the subject area.
21 Staff's basis for their analysis is that there are
22 outstanding impacts on the Blythe II site, and
23 therefore an alternative that reduces those
24 impacts would be preferable.

25 So I wanted to have a placeholder should

1 I need to explain that in any detail at
2 evidentiary hearing. But what we really intend to
3 show is throughout all the other technical areas
4 there are no outstanding unmitigated impacts that
5 would cause any of the other alternatives to be
6 environmentally preferable.

7 HEARING OFFICER SHEAN: All right. I
8 think what we'll do is we'll show that as
9 contested, and have that bring up essentially the
10 tail-end, so only if there's some additional
11 matter that you need to raise to the Committee
12 that hasn't been otherwise raised in this specific
13 topic area, you'll have that opportunity.

14 MR. GALATI: Thank you.

15 HEARING OFFICER SHEAN: And you can have
16 a rebuttal witness because you have your witness
17 through your FSA.

18 MS. DeCARLO: Correct.

19 HEARING OFFICER SHEAN: All right. Can
20 we go to biology now as to the people that you
21 needed to have here? All right. We have the
22 applicant showing a witness to deal with bird
23 hazing related to the use of evaporation pond.
24 And this is essentially rebuttal testimony to the
25 staff's FSA indicating that there are impacts to

1 wildlife -- avian wildlife, from the use currently
2 of the existing pond. And therefore there would
3 be some similar impacts from the one for the
4 Blythe II project, correct?

5 MR. GALATI: Yeah, that's correct. I
6 think staff has adequately pointed out there's a
7 potential for significant impact with bird life
8 getting into the ponds, and should the ponds, over
9 time, create high levels of selenium and sodium.

10 I think that our contention is that that
11 can be mitigated in much more less expensive ways
12 and still achieve an insignificant impact.

13 Point out the project's already doing
14 zero liquid discharge and evaporation pond is part
15 of that zero liquid discharge system. The dispute
16 is whether or not the applicant should install
17 equipment that will actually reduce the liquid
18 waste stream to a solid, thereby not using the
19 pond.

20 I would point out that in such a case if
21 the Committee were to decide that a crystallizer
22 was necessary, we would still want to build the
23 pond as an emergency overflow in case the system
24 breaks down, so that the plant would not have to
25 turn off.

1 HEARING OFFICER SHEAN: And moreover, --

2 MR. GALATI: But at this time we're
3 looking for --

4 HEARING OFFICER SHEAN: -- doesn't the
5 pond serve as your stormwater drain?

6 MR. GALATI: No, the stormwater
7 retention basin on the Blythe I site was sized
8 sufficient to accommodate all of Blythe II's site.
9 In fact, including almost 750 acres of the entire
10 watershed.

11 And so the Blythe II stormwater drainage
12 proposal is to share the Blythe I facility, direct
13 our stormwater there. So the evaporation pond
14 that we're talking about is completely separate,
15 and it's only to handle the liquid waste stream
16 from the use of water at the site.

17 HEARING OFFICER SHEAN: Okay,
18 understood.

19 PRESIDING MEMBER GEESMAN: I want to
20 make certain, though, that I understand your
21 position on this. And I believe, from reading
22 your prehearing conference statement, that you're
23 prepared to argue that the pond is consistent with
24 the policy adopted by the Commission in the 2003
25 Integrated Energy Policy Report regarding zero

1 liquid discharge systems.

2 MR. GALATI: That is correct. We are
3 utilizing, for example, Commissioner Geesman, if
4 we were to eliminate the pond and put in the
5 crystallizer, there would be very minimal water
6 savings, for example, because we are already
7 concentrating and cycling up the water almost as
8 high as it can be done.

9 What we are using is the evaporation
10 pond as opposed to putting in a crystallizer,
11 which is an expensive way to further evaporate the
12 water out, and create just a solid.

13 PRESIDING MEMBER GEESMAN: And you don't
14 think that's what the Commission had in mind when
15 it adopted the policy that it did in the 2003
16 Integrated Energy Policy Report?

17 MR. GALATI: I'm not aware that that was
18 what the Commission had in mind. Our
19 understanding is that basically the difference
20 between a crystallizer and evaporation pond is the
21 speed with which water is evaporated.

22 PRESIDING MEMBER GEESMAN: And the
23 staff, of course, argues that the pond is
24 inconsistent with the policy, if I understand your
25 statement correctly?

1 MS. DeCARLO: Correct, in addition to
2 the significant impacts that it results in.

3 PRESIDING MEMBER GEESMAN: Correct.

4 HEARING OFFICER SHEAN: All right, we're
5 showing that we're reserving time for the
6 applicant to have a witness, and if necessary, the
7 staff to have a rebuttal witness.

8 MR. GALATI: Yeah.

9 HEARING OFFICER SHEAN: You have your
10 FSA as your initial direct testimony.

11 MS. DeCARLO: Yes.

12 HEARING OFFICER SHEAN: Okay. Someone
13 just came on the phone. Would that person please
14 identify him- or herself?

15 MR. MOONEY: Bob Mooney, Desert
16 Southwest Transmission.

17 HEARING OFFICER SHEAN: Thank you, Mr.
18 Mooney.

19 All right, compliance. I think --

20 MR. GALATI: Mr. Hearing Officer, --

21 HEARING OFFICER SHEAN: Yes.

22 MR. GALATI: -- I apologize for the
23 interruption, but since it is a -- the issue with
24 the pond may be more of a policy decision and less
25 of a factual decision on whether the pond is

1 consistent with that policy.

2 I don't know if the Committee can give
3 us any guidance on what was intended by the IEPR
4 of 2003. We certainly would welcome it. I don't
5 know if you're prepared at this stage, but --

6 PRESIDING MEMBER GEESMAN: Well, I can
7 tell you my --

8 MR. GALATI: -- we'd like to resolve
9 issues if we could.

10 PRESIDING MEMBER GEESMAN: -- impression
11 from reading your prehearing conference statement
12 was one of surprise. So, upon first impression I
13 have to say that I was surprised by the position
14 outlined in your prehearing conference statement.
15 And I'd really need to think about it quite a bit
16 more before being able to get myself to the
17 conclusions that you drew.

18 MR. GALATI: Thank you.

19 HEARING OFFICER SHEAN: All right,
20 applicant indicated on compliance you wanted to
21 have a witness. Is that necessary in your mind at
22 this point?

23 MR. GALATI: Yeah, I do believe that
24 it's necessary to bring a witness to show the
25 water savings. I think we can do that very

1 simply.

2 HEARING OFFICER SHEAN: I beg your
3 pardon, this is on the compliance section.

4 MR. GALATI: Oh, compliance. No.

5 HEARING OFFICER SHEAN: Okay.

6 MR. GALATI: No, we can submit a
7 declaration.

8 HEARING OFFICER SHEAN: All right, we'll
9 do that then.

10 Cultural resources. Again, this had to
11 do with issues of wording on the cultural resource
12 conditions focused to some degree on a description
13 of what needed to be done in previously
14 undisturbed areas compared, for example, to those
15 that had been previously disturbed, is that
16 correct?

17 MR. GALATI: That's correct. And we can
18 establish the factual basis for our proposed
19 changes in our project description by explaining
20 to the Committee exactly what occurred during
21 Blythe I and what areas are likely to be disturbed
22 versus undisturbed. And then I think the comments
23 speak for themselves.

24 I don't think we need a live witness on
25 cultural resources to do that.

1 HEARING OFFICER SHEAN: All right. Any
2 reaction from the staff?

3 MS. DeCARLO: We would like to reserve
4 the right to present a live witness. It may be
5 that we can -- I'd have to take a look at this
6 with staff to determine if our position is
7 adequately represented in our FSA on these two
8 issues, these two conditions of certification.
9 Cul-9 we agreed to modify.

10 I would also identify that cultural
11 resources was identified by Carmella as an issue
12 area that she wants to present testimony on. So
13 upon seeing her testimony we might have a better
14 idea whether we really need a witness present.

15 HEARING OFFICER SHEAN: All right, we'll
16 reserve time for cultural resources

17 PRESIDING MEMBER GEESMAN: I guess I
18 need to ask, I'm not clear on what you're trying
19 to establish here on cultural resources.

20 MS. DeCARLO: Just we oppose that the
21 modifications to Cul-2 and Cul-6. So it would
22 just be a matter of insuring that our position on
23 why those two are absolutely necessary or
24 adequately represented in the FSA.

25 PRESIDING MEMBER GEESMAN: Okay. I'm

1 still not clear where the area of dispute might
2 lie. And I certainly don't want to restrict the
3 intervenor from having the opportunity to present
4 evidence, but I'm not getting a good signal from
5 either your statement or your comments as to what
6 you would plan to show.

7 MS. DeCARLO: Sure. For Cul-2 the
8 applicant wants to remove the ability of the CRS
9 to consult with the applicant on a weekly basis.
10 We believe it's essential that they do so. The
11 consultation provides the CRS with an idea of what
12 activities will take place for that week. And
13 upon that he can determine whether or not
14 monitoring is necessary.

15 Without that required weekly
16 consultation the CRS doesn't really know if he
17 needs to initiate consultation on his own. So we
18 believe that provision is absolutely necessary.

19 For Cul-6, the CRS needs to be onsite.
20 We've had problems with BEP-I where a important
21 historic deposit was damaged. And so we believe
22 that that condition is necessary to prevent
23 anything similar from happening on Blythe II.

24 PRESIDING MEMBER GEESMAN: And you don't
25 find compelling the applicant's assertion that the

1 entire site has been previously disturbed?

2 MS. DeCARLO: No.

3 PRESIDING MEMBER GEESMAN: Okay.

4 HEARING OFFICER SHEAN: All right, we'll
5 reserve time for that.

6 Then we have efficiency. Again, I'd ask
7 the applicant whether you would like to have time
8 reserved for that.

9 MR. GALATI: No, we can submit a
10 declaration.

11 HEARING OFFICER SHEAN: Is that all
12 right with the staff?

13 MS. DeCARLO: Yes.

14 MR. GALATI: We'd note also that that is
15 an area for the intervenor, as well.

16 HEARING OFFICER SHEAN: Right.

17 MR. GALATI: I would, at this stage,
18 object to her proposed witness as not being an
19 expert.

20 MS. DeCARLO: And actually for
21 efficiency we'd just like to reserve the right,
22 upon seeing Carmella's testimony, to determine
23 whether we do need to provide a witness.

24 HEARING OFFICER SHEAN: All right. I
25 mean I think you can understand we want to afford

1 maximum opportunity for a member of the local
2 community to come forth and make a presentation to
3 the Committee, whether or not it comes in as
4 testimony or comment, or how ultimately it arrives
5 at us. This is the purpose of our open planning
6 process, so we'll afford her the opportunity to
7 address us in one way or the other.

8 All right, how about the facility
9 design? Do you need time for that?

10 MR. GALATI: No, we can submit on
11 declaration.

12 MS. DeCARLO: Staff, as well.

13 HEARING OFFICER SHEAN: All right. Go
14 to geology and paleontology. Again, --

15 MR. GALATI: We have received a
16 modification from staff to our proposed changes on
17 Paleo-5 that are acceptable to us. And we would
18 propose that we include that change in our
19 testimony. And based on that we believe geology
20 and paleontology can proceed on declaration.

21 HEARING OFFICER SHEAN: Is that
22 satisfactory to staff?

23 MS. DeCARLO: Yes, if the applicant is
24 amenable to our modifications.

25 HEARING OFFICER SHEAN: All right.

1 Hazardous materials. Mr. Galati.

2 MR. GALATI: I think that we have made
3 some minor changes to the conditions of
4 certification. I think that we can argue this in
5 our briefs, and we don't believe we need live
6 testimony.

7 We would love to hear if staff agrees
8 with our two changes; one to Haz-2 and one to Haz-
9 11. We did also request that Haz-12 be deleted
10 based on information that we believe we've already
11 provided.

12 MS. DeCARLO: Haz-2 we do agree to
13 modify. Haz-11, we agree to modify to our recent
14 proposal that we submitted on June 24th. We
15 submitted a revision to Haz-11. Went into more
16 detail. It was based upon an event that happened
17 in Blythe I that we had to address.

18 And we've modified Blythe I's
19 provisions. They've agreed to these changes to
20 their hazardous materials conditions. So, --

21 MR. GALATI: And I do apologize to the
22 Committee. The changes are quite specific and we
23 have not had an opportunity to determine whether
24 or not we agree with those changes.

25 HEARING OFFICER SHEAN: All right,

1 again, this appears to be a wordsmithing issues,
2 to some degree, based upon facts that will exist
3 in the record at the time the FSA and your own
4 testimony come in.

5 MR. GALATI: Yeah, we'll work with staff
6 during the workshop hereafter. And to the extent
7 that we don't have an agreement, we will lay the
8 foundation in our project description testimony of
9 why we would make comments on any proposed
10 conditions. But I do not believe we need a live
11 witness on hazardous materials.

12 MS. DeCARLO: I would like to reserve
13 the right to provide rebuttal testimony depending
14 upon what the applicant submits.

15 MR. GALATI: Could I ask staff to opine
16 on hazardous materials-12, our comments there?

17 MS. DeCARLO: Yes, we do agree, the
18 applicant did provide a lithium bromide evaluation
19 which is very important to staff. That has been
20 completed, therefore it is reasonable to remove
21 the condition of certification.

22 HEARING OFFICER SHEAN: All right.
23 Well, as far as your rebuttal, what do you
24 anticipate is the factual information you would
25 submit that you haven't currently --

1 MS. DeCARLO: Well, --

2 HEARING OFFICER SHEAN: -- by virtue of
3 your FSA?

4 MS. DeCARLO: I'm assuming that the
5 applicant is going to explain why it doesn't
6 believe Haz-11 is necessary, or may provide some
7 factual discussion of why they cannot comply with
8 it, or it isn't necessary. So we would just like
9 to reserve the opportunity to provide it. I don't
10 know that it'll be necessary, but I would not like
11 to foreclose that option at this point.

12 And it may be if the Committee desires
13 that we provide that in writing, and not have a
14 live witness.

15 HEARING OFFICER SHEAN: Well, --

16 MS. DeCARLO: It's just difficult at
17 this point for staff because we haven't seen any
18 of the applicant's testimony, so we have no idea
19 what they're going to be saying on these issues.

20 MR. GALATI: I've just been informed by
21 one of our experts that we think we can work this
22 one out this afternoon.

23 HEARING OFFICER SHEAN: All right.

24 MR. GALATI: I don't think that there
25 will be a -- at least significant, factual

1 underlying decisions that the Committee would need
2 to make to resolve 11.

3 HEARING OFFICER SHEAN: Well, at best I
4 think the Committee is looking to Friday or maybe
5 Monday to get out a hearing order. So perhaps
6 what we should do is have, at least in some way, a
7 recapitulation of the outcome of a workshop, if it
8 is to occur, so we can take that into account when
9 we're doing whatever we're doing. Okay?

10 MR. GALATI: Okay.

11 HEARING OFFICER SHEAN: All right. Land
12 use.

13 MR. GALATI: There are some significant
14 comments in land use. It's not just the
15 conditions of certification. And therefore we
16 request live testimony on land use.

17 In addition, and it's up to the
18 Committee, there are basically -- this land use is
19 intertwined with traffic and transportation as it
20 relates to the airport. Our witnesses in traffic
21 and transportation and land use, we would ask the
22 Committee maybe to consider doing that as a panel
23 so that we could address ALUC issues, which staff
24 has placed in their land use section; and airport
25 safety issues, which we believe are one of the

1 underlying reasons that the ALUC decision in
2 traffic and transportation.

3 So we would like those combined if staff
4 doesn't mind.

5 HEARING OFFICER SHEAN: Let me just
6 indicate it appeared to the Committee that
7 substantively they're related. So, we would do
8 that.

9 MS. DeCARLO: And staff would support
10 that approach.

11 HEARING OFFICER SHEAN: Okay.

12 MR. GALATI: Does the Committee wish any
13 clarifying statements from us outside of what we
14 put in our prehearing conference of what the
15 substance of our dispute is?

16 HEARING OFFICER SHEAN: With respect to
17 the land use issue?

18 MR. GALATI: With the land use issue.

19 HEARING OFFICER SHEAN: Yeah, why don't
20 you give us a description of what it is you think,
21 because I think it's also -- yes, please.

22 MR. GALATI: This was an issue that we
23 had also discussed in the Blythe I proceeding.
24 And the basic issue was to what extent does
25 implementing a water conservation offset program

1 affect socioeconomically or does it affect the
2 retirement or impacts to farmland.

3 What we proposed in Blythe I, what was
4 adopted by the Commission in Blythe I, was a
5 series of conditions that our water conservation
6 offset plan avoid lands that would trigger certain
7 things that the Commission wouldn't ordinarily
8 find were an impact.

9 In addition, we had also agreed that
10 should there be permanent retirement of designated
11 land, that such land would be mitigated for,
12 though we didn't anticipate that because we are
13 pursuing, you know, as well as possible permanent
14 retirement, that it is possible of a rotational
15 fouling program.

16 So we think what we did at the beginning
17 of this project was agree to everything that
18 Blythe I did in our application. And that is
19 still our position.

20 I think staff has determined from their
21 own analysis that the water conservation offset
22 program needs to be different. And I think it's
23 that water conservation offset program which may
24 be resulting in impacts. We don't believe that
25 ours does.

1 Again, just to reiterate, we're going to
2 stay away from Williamson Act preserve lands. We
3 are going to not engage in activity that violates
4 any Williamson Act contract. And if we were to
5 take prime farmland or farmland of statewide
6 importance, excuse me I'm not sure if I'm using --
7 yeah, farmland of statewide importance, which
8 would be normally staff's threshold for
9 significance, permanently out of production, we
10 would provide money in agricultural trust to set
11 aside any equal number of acres.

12 We believe that resolves all potential
13 issues associated with land use.

14 PRESIDING MEMBER GEESMAN: Am I correct
15 in assuming that the scope of your water
16 conservation plan is driven by your choice of
17 cooling water options?

18 MR. GALATI: It is. Our water
19 conservation offset program is driven by the
20 potential that there is a future policy from the
21 Bureau of Reclamation that they would regulate or
22 try to account for groundwater in the region as
23 Colorado River water.

24 And the applicant has worked very hard
25 since 1998 with Blythe I, and the same principles

1 that you see here on Blythe II, in not only
2 securing Bureau approval, but having their input
3 as to what such a policy would look like.

4 We believe the water conservation offset
5 program is driven by a potential compliance with
6 LORS and not a mitigation of impact. And to that
7 extent, we believe that the water conservation
8 offset program, as approved by the U.S. Bureau,
9 satisfies that requirement.

10 PRESIDING MEMBER GEESMAN: Well, I don't
11 know if it would be productive now or not, to get
12 to the water aspect of this discussion.

13 MR. GALATI: I think our water people
14 are here to the extent that you wanted any
15 additional input other than hearing my charming
16 voice.

17 PRESIDING MEMBER GEESMAN: Well, I don't
18 mind your charming voice, and I wonder if you
19 would try to charm me through the rationale
20 whereby your proposed approach to cooling, which
21 would appear to be consistent with what this
22 Commission approved in the Blythe I decision, how
23 that conforms to the intervening development of
24 the Commission's 2003 Integrated Energy Policy
25 Report, and the policy adopted with respect to

1 cooling in that report.

2 MR. GALATI: First and foremost we would
3 present evidence on how dry cooling is not
4 feasible. And in order to understand how that is
5 not feasible we'll need some information that we
6 have not yet presented in our testimony, which is
7 the equipment for this plant is already purchased.
8 The equipment for this plant is sitting in
9 Arizona. The equipment for this plant is exactly
10 the equipment for Blythe I. Was purchased and
11 relied upon the Commission's decision in Blythe I.

12 It is not a simple matter of starting
13 from scratch and creating a dry-cooled plant as it
14 is taking equipment that was not intended to be
15 used for dry cooling and put that equipment, and
16 now modify it, which is significantly expensive.

17 And as you see in our water resources
18 section we have reserved the right to bring that
19 evidence through our experts as to what the true
20 cost of dry cooling would be in this location.

21 In addition, I think that it is, while
22 the Integrated Energy Policy Report summarized
23 what the different competing interpretations of
24 the law were at the time -- between applicants and
25 staff, at the time that Blythe I, for example, was

1 decided, we believe that staff took the exact same
2 position that it was the applicant's burden to
3 show that it was infeasible to use dry cooling,
4 which was met in Blythe I.

5 And it was the applicant's burden to
6 show there wasn't an impact from use of our water,
7 which we did, in Blythe I.

8 So while the Integrated Energy Policy
9 Report has come out with a succinct test, we
10 believe that test was applied in Blythe I.

11 With that in mind, we think it's
12 difficult and confusing to have a decision based
13 on the same underlying set of facts with two
14 potentially different outcomes, a very significant
15 cost to the project.

16 So, we intend to continue down that
17 road. Relitigate some of the issues in Blythe I.
18 And also provide to you what we believe is the
19 true cost of dry cooling.

20 PRESIDING MEMBER GEESMAN: And what
21 would the staff contemplate showing in the water
22 area?

23 MS. DeCARLO: Well, this is the first
24 time that we've heard the applicant mention that
25 they've already purchased their equipment, so we

1 would need to see that testimony in order to
2 respond to it.

3 However, we would show that on the whole
4 dry cooling is technologically feasible. That was
5 found by the Committee in Blythe I, and the
6 Commission. We would also show that dry cooling
7 is economically feasible. That's been found by
8 Committees in other siting cases.

9 And we --

10 PRESIDING MEMBER GEESMAN: You don't
11 feel that the Blythe I decision addressed the
12 economic feasibility issue?

13 MS. DeCARLO: I believe our analysis in
14 the meantime, what we've learned in the
15 intervening four years, have shown that we find
16 that it's now economically feasible. I don't
17 believe we had the facts to the extent that we do
18 now back then to come to that conclusion.

19 And I do believe that the underlying
20 facts have changed since, in the intervening four
21 years since Blythe I was decided, was approved.
22 Certainly the environmental situation has changed.

23 PRESIDING MEMBER GEESMAN: So if I
24 understand, Mr. Galati, you're not arguing with
25 the applicability of the policy in the 2003 IEPR;

1 you're suggesting that you're prepared to meet the
2 test laid out in that policy. And you suggest
3 that you previously met it in the Blythe I
4 proceeding.

5 Staff indicates changed facts or changed
6 circumstances in the intervening period of time.
7 But it sounds as if we will have contested
8 testimony on whether that test can be met.

9 I'm a little less clear on, and I guess
10 you're caught a bit by surprise, on whether it
11 should matter that the applicant has already
12 purchased equipment. And, you know, I look
13 forward to hearing both parties make that
14 particular argument. I'm not aware that you could
15 necessarily infer from the Commission's policy
16 that it did have a carve-out for applicants who
17 had already purchased their equipment.

18 But if you intend to be able to satisfy
19 the tests laid out in that policy as it relates to
20 feasibility, then I guess we'll hear more about it
21 in Blythe.

22 MR. GALATI: You bet, and I think the
23 primary purpose for us in providing that testimony
24 is we wanted to let you know that the Commission
25 ought to consider in its policy, certainly in its

1 effect of issuing a license to Blythe I and Blythe
2 II, to what extent that applicants rely on that.

3 I can understand the difference of a
4 case in a different locality not being in any way,
5 shape or form related to a case in a distinct
6 locality.

7 But when we have projects that are
8 identically right next to each other, with the
9 same underlying set of facts, we think that the
10 Committee should consider, and we'll continue to
11 argue this, that the Committee should consider
12 whether it's reasonable for an applicant to have
13 relied on what happened in Blythe I.

14 And so as far as purchasing equipment,
15 you're correct, there is nothing in the
16 Committee's policy in the IEPR 2003 report that
17 says there's a carve-out for anyone who purchased
18 equipment. But we do think that it's an
19 underlying fact that the Committee should be aware
20 of, and that we do believe that it may be
21 influential on the decision.

22 PRESIDING MEMBER GEESMAN: And I guess
23 Ms. DeCarlo seemed to imply it, anyway, the
24 passage of four years would, in her judgment,
25 represent a significant opportunity for

1 circumstances to change, and I think go to the
2 reasonableness of any applicant reliant. And I
3 presume you wouldn't extend that time dimension
4 indefinitely. If ten years had passed I don't
5 think you would suggest that an applicant should
6 be able to rely upon an earlier decision.

7 MR. GALATI: Exactly. I wouldn't
8 expect. But I would expect staff to have to meet
9 the burden that says what has changed dry cooling
10 technology-wise. What has changed in the baseline
11 environmental side. Staff has alleged changes in
12 the environmental baseline that I think we need to
13 adjudicate in front of the Committee. Because we
14 disagree with that.

15 If those changed circumstances were
16 significant enough to warrant doing something
17 different on this site than others, we agree with
18 that approach. And that's how things have
19 approached environmentally.

20 I'm not saying that they must remain
21 stagnant. We believe staff has not proved that
22 there are significant changed circumstances other
23 than the passage of time.

24 PRESIDING MEMBER GEESMAN: Okay, and
25 that then carries us back to the land use issue.

1 And I now better understand the area of dispute as
2 it relates to the land use.

3 I'm not certain I'm clear on the airport
4 aspect of the land use, and maybe we should defer
5 that to the transportation section, as I think one
6 of you had previously suggested.

7 MR. GALATI: Yeah, we can go into it
8 whenever you think is prudent.

9 HEARING OFFICER SHEAN: Okay. Let's
10 stay on the water theme, because we have several
11 distinct elements with respect to the water
12 quality soils issue as it relates to, I think,
13 water supply and water quality.

14 So, if I understand, with respect to the
15 testimony that's going to be offered by the
16 applicant, it will include -- few pages here --
17 this here is kind of a recap. Essentially even
18 though you've listed it as a land issue, we do
19 have the water conservation offset plan is
20 essentially an element of the water issue and the
21 compliance with applicable LORS, which would
22 include not only existing state policies, but now
23 also the Energy Commission's IEPR.

24 What else were you going to present by
25 way of affirmative testimony on water as it

1 relates to water supply issues?

2 MR. GALATI: As it relates, I think that
3 you've covered it generally. And in our area we
4 were going to also dispute staff's findings of
5 impacts, and staff's proposed mitigation for well
6 impacts. So local impacts, regional impacts and
7 applicability of all LORS is going to be the
8 subject of our water testimony. As well as dry
9 cooling, the alternatives and their costs,
10 feasibility.

11 With respect to water quality and soils,
12 we had a couple different --

13 HEARING OFFICER SHEAN: May I interrupt
14 you?

15 MR. GALATI: Oh, I'm sorry.

16 HEARING OFFICER SHEAN: So do I have
17 this correct, that with respect to dry cooling,
18 well impacts and alternatives, your testimony
19 essentially is rebuttal to the staff's FSA?

20 MR. GALATI: That's correct.

21 HEARING OFFICER SHEAN: Okay. And how
22 about is there something with respect to the idea
23 of Colorado River surface water transport to the
24 aquifer and that? Are you having testimony with
25 respect to that?

1 MR. GALATI: We will. Staff's, if I
2 summarize -- and, Lisa, correct me if I'm wrong,
3 but our understanding is staff believes that our
4 pumping of groundwater essentially is use of
5 Colorado River water to the extent that either
6 it's prohibited by LORS, one argument.

7 Two, that our pumping of groundwater
8 actually negatively impacts the ability for
9 downstream users to use Colorado River water,
10 because it essentially is taking some of it.

11 And three, that our pumping of
12 groundwater creates local well interference
13 impacts.

14 So to the extent that we have to lay out
15 the regime of the Colorado River law for purposes
16 of complying with LORS by pumping groundwater, we
17 would present that testimony.

18 To the extent that we would refute
19 staff's correlation between pumping groundwater
20 and impact to downstream users, we would refute
21 that testimony.

22 And with respect to staff's prediction
23 of well interference impacts we will refute that
24 testimony, but we have offered a condition of
25 certification which is exactly like Blythe I,

1 which insures that should there be interference,
2 that it would be mitigated in exactly the same way
3 Blythe I did some mitigation.

4 PRESIDING MEMBER GEESMAN: Do you
5 envision multiple witnesses, or a single witness?

6 MR. GALATI: You know, unfortunately, I
7 think I have to do that with multiple witnesses.
8 And in our, I think the people we'll be using,
9 we're thinking three or four witnesses.

10 And I do apologize, I forgot to mention
11 once again the linkage on the compliance with LORS
12 requires me to present more technical information
13 about the feasibility of dry cooling. So I have a
14 separate witness for that.

15 PRESIDING MEMBER GEESMAN: Sure.

16 MR. GALATI: But we would propose to
17 take them as a panel.

18 HEARING OFFICER SHEAN: Okay. Can we
19 hear from staff with respect to what portions of
20 your FSA you expect to produce?

21 MS. DeCARLO: Sure. Basically
22 explanation of our conclusion regarding LORS
23 inconsistency with the IEPR. The significant
24 impacts resulting from the pumping of the proposed
25 groundwater. And any further testimony that's

1 needed to rebut the applicant's testimony which we
2 have not yet seen.

3 I would just like to say I'm a little
4 concerned about the applicant's statement about
5 presenting testimony on Colorado water law. It
6 seems to me that legal analysis is more
7 appropriate in a brief form as opposed to live
8 testimony.

9 HEARING OFFICER SHEAN: Yeah, I think
10 what Mr. Galati is suggesting is he's going to
11 produce essentially as a framework and a little
12 bit of a foundation for the Committee so that the
13 record essentially ties together. And we
14 understand, at least, where they're coming from.

15 Obviously we're not going to have
16 lawyers or others testifying as to what the law
17 is. But, I think in order to set the stage for
18 his testimony the Committee will allow some
19 preliminary, as we would for the staff,
20 preliminary foundation to be established as to
21 what your view, or in their case their view, of
22 the law is.

23 MS. DeCARLO: Sure, and we understand
24 that. It's necessary to set the stage, as long as
25 it's a broad, general description. We'd be fine

1 with that.

2 MR. GALATI: I would agree with that,
3 but I would point out to the Committee that the
4 final staff assessment, which includes hundreds of
5 pages on water, several pages are directed to an
6 explanation of the law of the river, an
7 explanation. So it's in staff's testimony. If
8 staff would like to take that out of their
9 testimony, and put it in their brief.

10 But I am in a position, and I promise
11 the Committee that I will not be bringing a water
12 lawyer to discuss water law.

13 But we do need to refute when staff says
14 this is -- something is cause and effect. Or that
15 this means this. We have to refute that. To the
16 extent it is purely a legal conclusion, we'll be
17 doing that in argument and in our briefs.

18 But I would just point out that staff
19 has objected to what they've done.

20 HEARING OFFICER SHEAN: Okay. The nice
21 thing about the way we set this up is their stuff
22 is written and it's already prepared. Yours will
23 be written, and it will include whatever you put
24 in it. If there's something comparable to what
25 the staff has done, then you pretty much match

1 what they've done.

2 And the Committee, in the end, I'm sure,
3 among the lawyers serving on the Committee, can
4 figure out what's law, what's fact and distinguish
5 that.

6 MR. GALATI: Thank you. I think we
7 understand.

8 MS. DeCARLO: We just wanted to make
9 sure a lawyer wasn't going to actually stand up
10 there and testify as to what the law was.

11 MR. GALATI: I promise that will not
12 happen.

13 HEARING OFFICER SHEAN: There are too
14 many lawyers there to begin with.

15 (Laughter.)

16 MR. LOOPER: Just for the record, the
17 water law in the State of California was really
18 established by engineers. So, in case anybody
19 confused by that point, it's only litigated by
20 attorneys.

21 (Laughter.)

22 HEARING OFFICER SHEAN: All right, so we
23 can't really blame the lawyers. Blame the
24 engineers.

25 All right.

1 PRESIDING MEMBER GEESMAN: Ms. DeCarlo,
2 were you envisioning a witness on either
3 technological or economic feasibility of dry
4 cooling?

5 MS. DeCARLO: Yes, definitely. We
6 provided copious discussion of both of those
7 issues. And we will present -- and we envision
8 presenting a panel, as the applicant is, with
9 several of our witnesses who have expertise in
10 various sections of the staff analysis.

11 HEARING OFFICER SHEAN: All right, well,
12 that's obviously the biggie item in terms of time,
13 too.

14 Anything further on water?

15 MR. GALATI: Just water quality and
16 soils, not water resources.

17 HEARING OFFICER SHEAN: Okay.

18 MS. DeCARLO: And I have a question on
19 that matter. If the Committee is going to divide
20 up -- generally when staff analyzes water we
21 analyze quality along with resources. And just in
22 order for us to prepare, we'd like some direction
23 on whether there will actually be a division in
24 the testimony between quality and resources.

25 HEARING OFFICER SHEAN: Well, there will

1 be in the PMPD. So I think in the mind of -- I'll
2 just tell you that at least I believe in the mind
3 of the Committee they are distinct.

4 MS. DeCARLO: Okay.

5 HEARING OFFICER SHEAN: So, if you want
6 to -- let's address water quality, then. Let's
7 talk about that.

8 MR. GALATI: If you notice that in our
9 prehearing conference statement we have made some
10 modifications and changes to the conditions of
11 certification and the basis for that.

12 To the extent that we can provide that
13 either in a project description with a live
14 witness, or to the extent we're able to work it
15 out with staff today in a workshop, we're amenable
16 to both of those.

17 Staff gave alternative conditions of
18 certification should the Commission require a
19 crystallizer. And we're saying we don't believe
20 you should require a crystallizer, so therefore
21 conditions pertaining to it ought to be deleted.

22 We also have, I think our underlying
23 comment is that there's been so much work on this
24 site with respect to soil and water and drainage;
25 and I think the Committee needs to understand that

1 the project site was graded, and that the
2 retention basin was sized and designed and
3 approved by this Commission. Staff, through the
4 CBO process, and everything to handle what's
5 happening from Blythe II.

6 So, to have another set of conditions
7 that requires essentially the same type of work to
8 be done again, we think is, in this case it's
9 warranted not to have that standard condition.

10 So, whether the Committee wants live
11 testimony on that to explain how that occurred in
12 Blythe I, we're prepared to provide it.

13 HEARING OFFICER SHEAN: It probably
14 isn't a factual matter.

15 MR. GALATI: Yeah.

16 HEARING OFFICER SHEAN: So, let's not do
17 that.

18 MR. GALATI: Okay.

19 HEARING OFFICER SHEAN: All right, so
20 the bulk of the time we're going to spend is on
21 water resources here. I don't foresee, other than
22 some sort of either written or other argument with
23 respect to what you think is the inapplicability
24 of a new standard condition to a water quality
25 issue, am I correct?

1 MR. GALATI: That's correct.

2 HEARING OFFICER SHEAN: Okay.

3 MS. DeCARLO: Staff does have a water
4 quality issue with the proposed use of groundwater
5 in that its use would jeopardize the quality of
6 the water in the aquifer.

7 MR. GALATI: I think we can handle that
8 in the broad view of impacts to local and impacts
9 to regional water sources. We have no problem
10 combining those. Our panel would be prepared to
11 handle that in water resources.

12 MS. DeCARLO: And that's logical.

13 HEARING OFFICER SHEAN: Right. Because
14 this is a transport issue with regard to
15 essentially taking the water out of the aquifer,
16 am I correct in that?

17 MS. DeCARLO: Transport from further
18 below in the aquifer.

19 HEARING OFFICER SHEAN: Less quality of
20 water --

21 MS. DeCARLO: Would migrate upwards,
22 yes.

23 HEARING OFFICER SHEAN: Right. Okay,
24 then that is appropriate.

25 All right, let's, just to round out this

1 land use, jump to traffic and transportation with
2 respect to the airport, which is probably our next
3 or may be our next largest issue timewise at the
4 hearings.

5 And get from the applicant what it is
6 that you expect to produce.

7 MR. GALATI: Staff has made basically
8 two assertions in their staff assessment. The
9 first is that the Riverside Airport Land Use
10 Commission found the project inconsistent with the
11 comprehensive land use plan for the airport.

12 The City, in accordance with the law,
13 made an override of that particular decision.
14 Staff has determined that the City did not make
15 the appropriate findings and we tend to disagree,
16 and will present evidence that the findings were
17 made properly.

18 In addition, that finding of override
19 included with it several conditions upon the
20 project. Probably the most pertinent to staff's
21 second argument, which is aircraft safety, is the
22 prohibition of a landing pattern that would allow
23 pilots to fly over Blythe II, since Blythe II is
24 not on the approach to the runway, by changing the
25 traffic pattern which is a condition of our

1 approval that there will not be aircraft flying
2 over Blythe II. So we intend to show that, as
3 well.

4 Also to the extent that the Committee is
5 still concerned about the errant pilot that may
6 fly over Blythe II, we intend to provide airport
7 experts to describe the forces on the airplane and
8 to describe exactly what happens should an
9 airplane not abide by the traffic rules and fly
10 over Blythe II.

11 So those, without getting into a whole
12 lot of detail, it's information that we believe is
13 pertinent. We do not believe that there is an
14 airport safety issue for Blythe II.

15 We're somewhat at a disadvantage because
16 there's an ongoing discussion about Blythe I. And
17 what we intend to do is to show how Blythe II is
18 different, and how its issues are mitigated
19 separately and differently.

20 But to the extent the Committee -- we
21 are prepared to provide the same sort of analysis
22 that Blythe I has been providing, which is what
23 are the effects on the airplane should a plane fly
24 over Blythe II.

25 HEARING OFFICER SHEAN: So your

1 testimony would include, if I am reading you
2 correctly, an assertion that the Blythe II project
3 does not make a contribution to a cumulative
4 impact.

5 MR. GALATI: That's correct.

6 PRESIDING MEMBER GEESMAN: What does the
7 staff intend to show?

8 MS. DeCARLO: Staff intends to show one,
9 that the proposed location of the plant -- the
10 plant at its proposed location is inconsistent
11 with LORS. That's an independent determination
12 that the Commission needs to make regardless of
13 what other agencies have made.

14 Obviously, they're advisory, but we
15 don't believe that the City's override was one
16 complied with the requirements to conduct such an
17 override, and to adequately explain why the
18 project was not, in fact, inconsistent.

19 PRESIDING MEMBER GEESMAN: When did the
20 City adopt its override?

21 MS. DeCARLO: I believe it was sometime
22 last year, the year before.

23 PRESIDING MEMBER GEESMAN: Okay, but
24 since Blythe I was licensed?

25 MS. DeCARLO: Yes.

1 MR. GALATI: And since the complaints on
2 Blythe I.

3 PRESIDING MEMBER GEESMAN: And is it
4 staff's view that, I'm not suggesting they do
5 this, but if the City corrected its override
6 resolution and made the findings that you think
7 they should have made it, would that make the
8 problem go away?

9 MS. DeCARLO: We don't believe so. The
10 City override is inconsistent, in and of itself.
11 One of the conditions for the override
12 specifically states that the project will not
13 generate smoke or water vapor which would -- or
14 any use which would attract large concentrations
15 of birds.

16 The project, as proposed, will include
17 an evaporation pond, which has already been shown
18 in Blythe I and II attract large concentrations of
19 birds.

20 Additionally, inherently in any power
21 plant is the generation of water vapor. And we
22 believe at the proposed location the vapor rises
23 to level one thermal plumes, a serious potential
24 for impact. In addition to the visible plumes
25 that would obscure the ability of a pilot to land

1 safely.

2 MR. GALATI: If I could point out for
3 the Committee that the conditions such as what Ms.
4 DeCarlo just read were conditions that the Airport
5 Land Use Commission placed on Blythe I when it
6 approved it and found it was consistent.

7 So the sole issue with Blythe I is not
8 birds. It's not visible plumes. It is thermal
9 updrafts associated with the cooling tower.

10 And if, in fact, which we believe to
11 show it will not be the fact, if, in fact, there
12 is an interference with airport operations, Blythe
13 I's condition by this Commission, which
14 incorporated those Land Use Commission
15 recommendations, would force Blythe I to make
16 modifications in a way that it does not cause
17 these interference with flights.

18 The City adopted exactly those same
19 conditions. And we would dispute the fact that
20 there's large concentrations of birds. There are
21 some birds that, from a biology standpoint, may
22 produce some impact. There's never been a
23 complaint that birds interfere with the airport.

24 So, again, what we believe is that
25 Blythe II is further away from the runway

1 approach; that aircraft will be prevented from
2 flying over Blythe II; and that with the
3 conditions of certification there is not an
4 airport traffic safety issue. Nor is there an
5 inconsistent land use.

6 PRESIDING MEMBER GEESMAN: I know
7 there's been a fair amount of post-certification
8 dialogue with the City and with others regarding
9 airport issues at Blythe I. Frankly, I don't know
10 what the current status of that dialogue is.

11 I presume your testimony at the hearing
12 will be informed by whatever the status of that
13 dialogue is at the time?

14 MS. DeCARLO: Yes, definitely. And
15 we're still undergoing discussion with Blythe I on
16 how to resolve the issue with the City, and with
17 Blythe, as well. And we will inform the Committee
18 about what we know of the status of that.

19 PRESIDING MEMBER GEESMAN: And is it
20 possible that the resolution of those issues
21 regarding Blythe I will impact staff's position on
22 these issues regarding Blythe II?

23 MS. DeCARLO: No. We believe that even
24 with all of the avenues we're pursuing with trying
25 to remedy the Blythe I situation that the addition

1 of a second power plant closer to the airport,
2 itself, presents an unmitigable potential
3 significant adverse impact.

4 PRESIDING MEMBER GEESMAN: Well, I'm
5 hesitant to base anything on my understanding of
6 the status of Blythe I dialogue. So I want to
7 establish that. And that would suggest that we
8 ought to develop a record on this issue.

9 But I have to tell you, I think the
10 staff is proceeding in an uphill fashion, based on
11 my understanding of the Blythe I dialogue.

12 I look forward to whatever showing you
13 make in our evidentiary hearings. But it remains
14 to be seen if there is a connection.

15 HEARING OFFICER SHEAN: Mr. Galati, you
16 indicated one of the conditions imposed by the
17 City, is it a different approach pattern to runway
18 2-6?

19 MR. GALATI: That's correct. In
20 addition to the several conditions that were posed
21 by the Commission and the Airport Land Use
22 Commission on Blythe I, the City added additional
23 conditions. And one of those is that the approach
24 pattern will be changed so that people landing at
25 the airport to runway 2-6 will not approach it in

1 a fashion that takes them over Blythe II, but
2 takes them from the other side.

3 And I get confused whether that's right-
4 hand -- I'll ask -- Bob's going to kill me because
5 I always mess those two up, but one of the
6 approach -- Bop, which one?

7 MR. LOOPER: The current pattern is
8 scattered left-hand pattern going into runway 2-6
9 at Blythe. And the condition is to convert that
10 pattern to a standard right-hand pattern, which
11 takes over the other side of the airport. And
12 completely away from Blythe II.

13 MR. GALATI: Trust me when I say I could
14 not have said that better.

15 HEARING OFFICER SHEAN: Okay, and is
16 that a short -- let me just also indicate I've
17 been a general aviation pilot for about 15 years -
18 - does that also include a short downwind? Or
19 it's downwind that is equivalent to what it was
20 with the left downwind pattern?

21 MR. LOOPER: I think what we've agreed
22 in discussions with the City, which will probably
23 come out in the Blythe I discussions, is that
24 ultimately what needs to be done is through
25 working with FAA consultant, the actual pattern

1 needs to be revisited; the nodems need to be
2 written; and there needs to be a new look at what
3 appears in your flight guide when your pilot and
4 you come and land into Blythe. And whether that
5 involves shortening the downwind, or lengthening
6 or a change in the emergency approach pattern to
7 where you go and how you land into Blythe.

8 There are some -- all those procedures,
9 I think, will be revisited probably in light of
10 the Blythe I resolution. But in addition to it,
11 the switch from the right-hand to the left-hand
12 pattern at Blythe.

13 And ultimately there'll be a supportable
14 standard set of rules and guidelines for flying
15 into Blythe Airport.

16 HEARING OFFICER SHEAN: I think, Mr.
17 Galati, given that a lot of this aviation
18 technospeak, it would help a lot for the
19 Committee's purposes if you have some graphics
20 that indicate either what the current pattern,
21 altitude, et cetera, is; and what's proposed by
22 this condition. So that we can, within the
23 Committee and in a document that's intended to
24 inform the public, give them some information
25 that's more easily comprehensible. And that

1 probably is with a picture.

2 MR. GALATI: Yeah, we will definitely do
3 that. And we do have aviation experts who will
4 also testify using those visual aides.

5 HEARING OFFICER SHEAN: Okay.

6 MR. NELSON: Mr. Chair, before you get
7 off the transportation issues, this is the City of
8 Blythe. Could we ask a procedural clarification
9 question?

10 HEARING OFFICER SHEAN: Go ahead,
11 please.

12 MR. NELSON: In the prehearing notice
13 there's some indication that to offer any sort of
14 testimony you have to register as an intervenor.
15 I'm assuming that the City will have an ability to
16 offer testimony and explain why we did what we did
17 relative to the Airport Land Use Commission
18 without having to register as an intervenor?

19 HEARING OFFICER SHEAN: I think what
20 we'll do is include you with the list of witnesses
21 to be presented by the applicant, and they can
22 lead you through the appropriate introduction of
23 whatever comment or testimony you're proposing to
24 give.

25 MR. GALATI: And I have listed a

1 representative of the City, Butch Hull, to the
2 extent that it is Butch or Les or any other
3 representative of the City. I have reserved time
4 for that testimony.

5 MR. NELSON: Thank you.

6 HEARING OFFICER SHEAN: You're covered.

7 MR. NELSON: Thank you.

8 MS. DeCARLO: Staff would just request
9 that testimony be prefiled, as well, so we have an
10 idea of what the exact testimony will be.

11 HEARING OFFICER SHEAN: Okay. Is this
12 Mr. Hull?

13 MR. NELSON: This is Mr. Nelson.

14 HEARING OFFICER SHEAN: Oh, Mr. Nelson.

15 MR. NELSON: The City Manager. I think
16 what our testimony will be is that the Airport
17 Land Use Commission requirement basically placed a
18 dimensional overlay over the airport.

19 And what we are going to say is that the
20 Blythe Energy II project is outside all of those
21 dimensional boxes. That will be our testimony.

22 HEARING OFFICER SHEAN: Okay. And let
23 me just indicate, sir, that in order to assure
24 fairness at the time of the hearing everyone who
25 is making a statement that is testimony is

1 preparing it in written form, and is having it
2 available at a date that will be specified by the
3 Committee, so that anybody who either agrees or
4 disagrees with it, has an opportunity to read it
5 in advance. And prepare, in the case of the
6 staff, if it chooses to, some form of rebuttal.

7 MR. NELSON: And we've prepared a fairly
8 significant staff report detailing the logic
9 behind it. It wasn't a one-page summary. This is
10 probably a 10- to 15-page analysis. And we'll
11 certainly make that available to whomever the
12 Commission dictates.

13 HEARING OFFICER SHEAN: That'll be fine.
14 I think Mr. Galati has now dialed into what it is
15 that the City has, and what should be provided
16 pursuant to the Committee's hearing order.

17 MR. GALATI: Right, I'm well aware of
18 that entire staff report and everything that went
19 on will be exhibits to our testimony. And we
20 would also secure the testimony of the City that
21 should it need to summarize that; and include it
22 in our testimony package.

23 HEARING OFFICER SHEAN: All right. And
24 so have we captured everything with respect to --

25 MS. DeCARLO: I would just like to say

1 in response to Mr. Galati's statement that staff
2 will make a showing that the change of the
3 pattern, the landing pattern, will not reduce the
4 potential for impacts to less than significant.

5 HEARING OFFICER SHEAN: Understood. All
6 right.

7 MR. GALATI: We also had a minor change
8 to Trans-5, if staff has had a chance to take a
9 look at that and could give us an opinion.

10 MS. DeCARLO: Yes, and we agree to the
11 modification. There's a difference -- there's no
12 substantial difference in traffic in the area
13 regardless of rush hour or not, so therefore we
14 find that the modification to the condition is
15 appropriate at this location.

16 All right. Well, we'll get to spend a
17 lot of time on this, but, all right.

18 Let's go back up the list. We had
19 concluded noise and now -- I'm sorry, land use,
20 and now noise and vibration. It appears, am I
21 correct, Mr. Galati, that rather than needing time
22 for this, --

23 MR. GALATI: No, we can submit that on
24 declaration.

25 HEARING OFFICER SHEAN: -- by

1 declaration is okay?

2 MR. GALATI: Yes.

3 HEARING OFFICER SHEAN: And is that true
4 with staff?

5 MS. DeCARLO: Yes, by declaration.

6 HEARING OFFICER SHEAN: Public health,
7 would that be the same?

8 MR. GALATI: Public health is the same.
9 We can submit on declaration.

10 HEARING OFFICER SHEAN: And staff?

11 MS. DeCARLO: Yes, we would like an
12 indication from the intervenors, though. Public
13 health usually goes hand-in-hand with air quality
14 when the intervenors are concerned about that
15 subject matter. So we would like some
16 confirmation on whether they want staff witnesses
17 available on that issue.

18 But as far as direct testimony,
19 depending upon Carmella's filing, we most likely
20 would not have any.

21 HEARING OFFICER SHEAN: Well, then, to
22 some degree, without her being on the phone, we're
23 going to have to guess a bit as to what we're
24 going to do.

25 All right, how about reliability?

1 MR. GALATI: We can submit on
2 declaration.

3 HEARING OFFICER SHEAN: Is that all
4 right with staff?

5 MS. DeCARLO: Yes. And we will be
6 submitting ours by declaration, as well.

7 HEARING OFFICER SHEAN: Socioeconomics.
8 This is one of the topics that the intervenor had
9 requested, and probably the main topic. We've
10 received several declarations that address that.
11 And I presume that right now we're assuming the
12 intervenor's going to present those.

13 I can also indicate that, and I hope
14 you've seen this, Mr. Galati, that she has
15 presented a data request. Have you received this?

16 MR. GALATI: I have received nothing but
17 a one-page faxed prehearing conference statement
18 that listed items and people who would testify.
19 So, I have not yet received it. And I actually
20 received that from the Commission, so I think the
21 Public Adviser's Office may have docketed it and
22 served me. But I have not received anything
23 regarding any testimony or data request.

24 HEARING OFFICER SHEAN: Okay, well, then
25 I'm going to hand you my copy of her data request

1 so that by the time you conduct whatever this
2 workshop is following the proceeding perhaps you
3 can inform the Committee of whether the applicant
4 is going to respond to this; and if so, how.

5 MR. GALATI: Thank you.

6 HEARING OFFICER SHEAN: Some of that
7 information not only pertains to the socioeconomic
8 issues related to impacts upon farm laborers, but
9 also some water issues.

10 MR. GALATI: I can give you our general
11 answer now, which is --

12 HEARING OFFICER SHEAN: Okay.

13 MR. GALATI: -- to the extent this is
14 information we've already produced, we will
15 certainly compile it again and provide it to Ms.
16 Garnica in a summary form.

17 To the extent staff has addressed it, we
18 will point her to the staff assessment and where
19 it's been addressed.

20 To the extent it is requesting new and
21 different analyses at this late date, we would
22 object.

23 HEARING OFFICER SHEAN: Okay. Well,
24 we'll let you handle that accordingly and inform
25 us of what you do.

1 MR. GALATI: Certainly will do that in
2 writing to the Committee.

3 HEARING OFFICER SHEAN: Okay. But,
4 right now we're going to reserve time for Ms.
5 Garnica to make a direct presentation on
6 socioeconomics, which we believe will be in the
7 area of impact to farmworkers, either from the
8 direct impacts related to the site, which she
9 refers to in the declarations we've received. Or
10 from the water offset plan which presumably she's
11 asserting has an impact to employment
12 opportunities for farmworkers.

13 MR. GALATI: That's correct, and I think
14 staff has made the same conclusion for purposes of
15 incorporating Socio-2. It's obviously very
16 different magnitude of assertion. But we, in our
17 prehearing conference, believe that Socio-2 should
18 be deleted, and intend to present testimony as to
19 what the impacts are, if any.

20 HEARING OFFICER SHEAN: All right, so
21 your testimony will be in the nature of rebuttal.

22 MR. GALATI: Correct.

23 HEARING OFFICER SHEAN: Okay.

24 MS. DeCARLO: And staff will be prepared
25 to present testimony on that issue, as well.

1 HEARING OFFICER SHEAN: All right.
2 We'll reserve time for it.

3 We skip traffic and transportation,
4 having already covered that. And we go down to
5 transmission line safety and nuisance.

6 We do that on declaration?

7 MR. GALATI: We can proceed on
8 declaration.

9 MS. DeCARLO: Staff can, as well.
10 Although I would like to point out that Carmella
11 has identified transmissions as an item she would
12 like to present testimony. I do not know if that
13 goes to transmission system engineering, or
14 transmission line safety and nuisance.

15 So we would like to reserve the right,
16 upon seeing her testimony, to determine whether or
17 not we need to provide a witness.

18 HEARING OFFICER SHEAN: Right. Again,
19 we're working in the dark a little bit without
20 some further explanation from her. And we'll just
21 try to be flexible and mobile about the whole
22 thing, and assure that both the staff and the
23 applicant have rebuttal opportunities if you need
24 it.

25 Transmission system engineering.

1 Another biggie.

2 MR. GALATI: Basically I'm going to have
3 Chris Ellison come up, who's handling transmission
4 system engineering for us. I can summarize,
5 though, from this perspective, is that we received
6 on the 24th a transmission system engineering
7 rewrite section with quite a few conditions, and
8 very specific conditions.

9 And we haven't yet been able to get our
10 arms around whether or not these are the kinds of
11 standard conditions with which we can comply. And
12 I'll let Chris address anything or any questions
13 further that you may have. But we intend to
14 present testimony at this stage about whether we
15 agree with those conditions of certification.

16 HEARING OFFICER SHEAN: All right. Some
17 of those conditions are boilerplate that have been
18 in prior decisions. And I think others are
19 intended to address solely your situation with
20 respect to the downstream of downstream impacts,
21 if I am understanding them correctly.

22 MR. GALATI: Yeah, I think that's
23 correct. I think that the timing of some of the
24 conditions were also of concern for us. As you
25 know, we proposed a condition that we thought was

1 global in nature, that would also -- but we
2 haven't yet reconciled if we can modify staff's
3 conditions to also accomplish that objective --

4 HEARING OFFICER SHEAN: Okay.

5 MR. GALATI: -- at this stage.

6 MR. ELLISON: I don't have a great deal
7 to add to what Scott has just said. We are still
8 looking over the conditions and evaluating them.
9 We will be presenting testimony. It's clear that
10 there is a dispute on this issue.

11 The one thing that I would add is that
12 just on a couple of kind of general reactions are
13 that I would again emphasize that we are asking
14 the Commission to approve only the interconnection
15 at Buck Boulevard. And it's based on the
16 assumption that the Desert Southwest Transmission
17 Project, which is a separate project, goes
18 forward.

19 There are some implications in the
20 staff's revised testimony that staff may believe
21 that we're asking the Commission to approve any
22 alternative to that. I want to emphasize again
23 that if a different configuration becomes
24 necessary, that the applicant understands that we
25 would have to come back and propose an amendment.

1 The staff testimony makes the statement
2 that they do not believe that that amendment could
3 be granted pursuant to the Commission's
4 regulations. We disagree with that.

5 But I do want to clear up any
6 misunderstanding that may exist about what we are
7 proposing the Commission license here. I don't
8 think the Committee's confused about this, but to
9 make sure that there is --

10 PRESIDING MEMBER GEESMAN: I want to
11 assure you, I'm not confused about it at all. And
12 from the sound of it, your position has not
13 changed since the last time we visited this
14 question a month or so ago. And I want to assure
15 you my position has not changed, either.

16 I look forward to whatever it is the
17 staff plans to show in the evidentiary hearing.
18 But I really want to reiterate, I made my thoughts
19 on our jurisdictional limit pretty clear the last
20 time we convened. I don't intend to vary from
21 that.

22 MS. DeCARLO: And I want to assure you
23 that although our position has not changed, we
24 will not relitigate the issues that we discussed
25 last month. Our point here now is solely to

1 discuss the conditions of certification and insure
2 that we're comfortable with what's going to be
3 required of the applicant.

4 PRESIDING MEMBER GEESMAN: All right.

5 HEARING OFFICER SHEAN: So, does that
6 narrow the scope of what it is you'll be
7 presenting?

8 MS. DeCARLO: That'll narrow the scope
9 of our oral direct testimony, but, you know, the
10 scope of our position in our testimony, written,
11 remains the same. However, we're not going to
12 waste the Committee's time re-arguing items that
13 the Committee has already decided upon.

14 HEARING OFFICER SHEAN: Well, presumably
15 you want to introduce your written FSA
16 supplement --

17 MS. DeCARLO: Right.

18 HEARING OFFICER SHEAN: -- as your
19 testimony. So notwithstanding the fact that you
20 think your oral may be more limited, the testimony
21 that comes from the staff will include
22 fundamentally everything that was discussed at our
23 prior motion hearing, as well as whatever you're
24 going to add in comment on their proposed
25 condition?

1 MS. DeCARLO: Right. And the bulk of
2 what we submitted on Friday, on June 24th, was the
3 same as our previous version of the FSA. There
4 were a couple differences here and there, but the
5 bulk of the changes were in the presentation of
6 the conditions of certification.

7 HEARING OFFICER SHEAN: Which, it
8 appears, would obligate them to rebut the position
9 you took in the motion hearing?

10 MS. DeCARLO: Right. We're not
11 suggesting that they be limited to what they can
12 argue. We're just suggesting that our direct
13 testimony won't go on ad infinitum discussing
14 issues that were discussed at the previous motion
15 hearing.

16 MR. ELLISON: Well, Mr. Shean, I think
17 you've identified our problem, and we would -- you
18 know, we think the Committee has ruled on this
19 issue. We think by presenting written direct
20 testimony that re-raises those same questions, the
21 staff would be relitigating those issues and would
22 be putting us in the position of having to rebut
23 that testimony, at least in our written testimony.
24 Maybe we could stipulate that we won't do it
25 orally.

1 I will simply say that we are concerned
2 about that, and would reserve the right to perhaps
3 bring a motion to strike or something of that
4 nature.

5 HEARING OFFICER SHEAN: Would your
6 rebuttal go significantly beyond the BART study
7 and anything that would support that?

8 MR. ELLISON: Well, we'll certainly be
9 submitting the BART study as part of our
10 testimony. The kinds of questions that we're
11 wrestling with are whether to address in either
12 our testimony or our briefs once again the
13 statements in staff's direct testimony about lack
14 of information and that sort of thing.

15 HEARING OFFICER SHEAN: Well, for them
16 to assert that they claim they don't have enough
17 information is different from -- and therefore
18 they can't make a recommendation to the Committee
19 and ultimately the Commission that this be
20 certified -- is different from saying we have the
21 stone tablets that say there isn't enough
22 information. Okay? Do we -- I think we --

23 MR. ELLISON: That's correct, and let me
24 say something that may be addressing what your
25 concern is. We certainly understand that in

1 contrast with some other Commission cases to
2 approve this project the Committee and the
3 Commission are not in a position of relying upon
4 the staff's testimony as they've drafted it for
5 this issue.

6 And that our testimony will have to
7 fully support a proposed decision approving the
8 project. And we intend to provide testimony that
9 will do that.

10 HEARING OFFICER SHEAN: Okay. Why don't
11 you, during your discussions in this workshop,
12 also determine, therefore, whether or not, for
13 example, there's a problem between the two parties
14 with regard to a stipulation that will tell us
15 that, you know, the BART study can be used; that
16 there is a filing by the Desert Southwest
17 Transmission folks, and what its current status is
18 as of the time. You know, something either in
19 early July or something as to where it is; what
20 has been prepared with respect to environmental
21 documentation. So that probably fundamentally we
22 can get the facts that surround this dispute
23 pretty much agreed to, as far as their existence.
24 Even though you don't agree to what they mean.

25 MR. ELLISON: We will attempt to do

1 that.

2 HEARING OFFICER SHEAN: I mean I
3 acknowledge you don't agree what they mean. But
4 everyone knows there is a BART study, and everyone
5 knows there is an application for licensing of the
6 transmission line.

7 So I don't think we need to spend time
8 testimonially dealing with that. It's just you
9 interpret the effect of those things differently.

10 Okay.

11 MS. DeCARLO: I would just like to ask
12 if the applicant is entertaining a motion to
13 strike staff's testimony that we receive that with
14 enough time, well before the hearings, to respond.
15 And it not be presented at the hearings or at a
16 late date.

17 MR. ELLISON: We will try to do that in
18 a timely manner, recognizing that we only received
19 the staff's testimony on Friday.

20 MS. DeCARLO: The bulk of which was
21 submitted over a month and a half ago.

22 HEARING OFFICER SHEAN: Okay. We're
23 nimble. We can also deal with that, even to some
24 degree, at the hearing in terms of if it should be
25 limited and how it should be limited, or whether

1 it all comes in or whether none of it comes in.

2 All right, we will reserve time for
3 transmission system engineering.

4 Let's go to waste management then. It
5 appears that we have disputed language in a
6 condition for that.

7 MS. DeCARLO: I can just say right now
8 that staff agrees to the proposed modification
9 Waste-7.

10 HEARING OFFICER SHEAN: Fine. That's
11 just what we wanted to hear. We'll take that by
12 declaration, agreeable to applicant and staff?

13 MS. DeCARLO: Yes.

14 MR. GALATI: That's agreeable.

15 HEARING OFFICER SHEAN: All right. I
16 think we've done water quality and soils
17 sufficiently.

18 Water resources has also -- is there any
19 matter in water resources that was not covered in
20 our discussion about -- in our earlier discussion
21 today?

22 MR. GALATI: I don't believe so, but I
23 want to make absolutely clear to the Committee
24 that there were other water quality-related issues
25 with the retention basin and the reporting and the

1 erosion control plans that we think have already
2 been addressed by Blythe I, and we intend to
3 provide that testimony so that those conditions
4 are not required for Blythe II.

5 HEARING OFFICER SHEAN: As to water
6 quality.

7 MR. GALATI: As to, yeah, water quality,
8 drainage.

9 HEARING OFFICER SHEAN: Right.

10 MS. DeCARLO: And staff is prepared to
11 provide testimony as to why it should be required.

12 HEARING OFFICER SHEAN: Okay, I think we
13 have that.

14 And while I'm looking at your form, let
15 me just indicate, Mr. Galati, and this would apply
16 to the staff, you're showing a substantial amount
17 of time for direct testimony. And I think what
18 the Committee is likely to do is to approach it in
19 the following way:

20 If you submitted direct written
21 testimony we have read it. It may be, given the
22 circumstances, that a party has an opportunity for
23 a very brief recap of what they've stated. But I
24 think you need to understand, given the fact that
25 we will have absorbed it by reading, there is not

1 reason for a lot of dog-and-pony-show to get this
2 thing revved up and launched in terms of the
3 direct testimony.

4 We're going to want to get, pretty
5 quickly, right to any explanation, corrections or
6 whatever. And once that's done, getting into the
7 rapier-like cross-examination, so that we get the
8 issues focused. And then redirect and recross and
9 we're done.

10 MR. GALATI: We actually support that.
11 Not all hearing officers do, by the way, so we are
12 very excited about that, because we don't want to
13 rehash this in a direct testimony, very trial-
14 oriented way. We would love to get to the issues,
15 get to cross-examination and have the Committee
16 ask our direct witnesses whatever questions they
17 want.

18 MS. DeCARLO: We agree with the focusing
19 of the issues, however this will be staff's first
20 opportunity to provide rebuttal testimony, so we
21 may need a little more time than the applicant
22 would need to provide such testimony.

23 And we will insure that it is directly
24 related and specific to the points raised by the
25 applicant in their testimony.

1 HEARING OFFICER SHEAN: All right. And
2 I can tell you one of the more interesting things
3 that we did, for example in the El Segundo
4 proceeding, was if there was a need for rebuttal
5 testimony we did it there, live, in real time
6 without a submittal of it in writing. Makes it
7 very interesting; makes it informative. And we'll
8 have to see how that may fit in with what the
9 parties basically leave us with when we're all
10 done here today.

11 MR. GALATI: I would ask that if
12 rebuttal testimony were to include new exhibits,
13 that we be provided those exhibits ahead of time,
14 as opposed to at the hearing.

15 But I think we're prepared to handle
16 whatever staff's oral rebuttal testimony is at the
17 hearing.

18 HEARING OFFICER SHEAN: Okay.

19 MR. GALATI: I'd like to have an exhibit
20 that I can look at ahead of time, because it's
21 awful hard to pay attention while I'm reading an
22 exhibit.

23 HEARING OFFICER SHEAN: Well, I think we
24 should just indicate as a blanket approach here,
25 that any reference document to be used by a

1 witness or any, if you have it, graphic or other
2 presentation like that be provided at the time
3 that the direct testimony is being filed by either
4 party, so that there is as much of an exchange of
5 this kind of information and least opportunity for
6 surprise as possible. Okay.

7 MS. DeCARLO: I'd just like to say that
8 for the sake of saving paper, we will identify
9 specifically those items that the applicant
10 already has in their possession. And certainly
11 provide any new documents that we may be
12 presenting.

13 HEARING OFFICER SHEAN: All right.
14 Let's do worker safety, then. Mr. Galati.

15 MR. GALATI: Yeah. I believe that staff
16 has accepted our proposed change to worker safety-
17 2, so I think we're okay there. So the only issue
18 is worker safety-3, and I think that that is
19 something that we can work out in a workshop.

20 And to the extent that -- I don't
21 believe we need live testimony on worker safety-3.

22 HEARING OFFICER SHEAN: Would that be
23 your belief, as well?

24 MS. DeCARLO: Depending upon how things
25 go at the workshop. We do believe the applicant

1 wants to eliminate the requirement that onsite
2 personnel be trained to the level of hazmat
3 technicians. And we believe it's absolutely
4 critical that several people onsite, at least one
5 per shift, be trained in such a manner.
6 Especially stemming from the incident that
7 occurred on Blythe I.

8 HEARING OFFICER SHEAN: All right.
9 Sounds, again, as if there's not an underlying
10 factual dispute; just a question of whether or not
11 the record we do have warrants having that kind of
12 a condition imposed.

13 MR. GALATI: We would agree with that.

14 HEARING OFFICER SHEAN: Okay. Let's go
15 now to visual resources.

16 MR. GALATI: I think the --

17 HEARING OFFICER SHEAN: And it appears
18 that this is going to require, if I understand
19 correctly, unless something happens in the
20 interim, some time for you to have a witness.

21 MR. GALATI: That's correct. We
22 basically dispute staff's finding of impact that
23 is leading to the requirement of a landscape plan
24 to provide screening.

25 To the extent that staff would agree

1 that the landscape plan is not intended to
2 mitigate the impact, but to comply with LORS, we
3 think we can draft language that properly places
4 the landscaping approval process in the City.
5 Because that was the problem on Blythe I, and it
6 is the problem for Blythe II.

7 In the desert the idea of large
8 screening trees is something difficult; it's
9 certainly something that the City does not want.

10 HEARING OFFICER SHEAN: Might be a
11 problem with the airport, as well. Okay. We'll
12 afford some time on that issue, and it will
13 include time for you, as well.

14 All right, it appears to me that we've
15 gone through all the substantive areas on the
16 list. Is there anything that either of the
17 parties wish to comment with respect to that?

18 MR. GALATI: I would like to bring up an
19 issue about intervention. And I understand that
20 Ms. Garnica, who is an intervenor in this case,
21 has filed a prehearing conference statement and
22 intends to provide testimony; and we will respond
23 to that.

24 My experience has been in Blythe I and
25 in other cases that other groups tend to come in

1 under her intervention status and relitigate
2 issues and are provided the same level of direct
3 examination and cross-examination that are only
4 provided to intervenors.

5 And I would ask that it be restricted to
6 Ms. Garnica providing that. She is the intervenor
7 who has responded with a prehearing conference
8 statement. I'm not in any way, shape or form
9 asserting that someone should not be allowed, no
10 matter who it is, to comment publicly.

11 But the ability to sit at the dais, to
12 sit at the table and present witnesses and cross-
13 examine witnesses is one that is reserved for
14 parties. I think we have three parties here, and
15 I would like us to continue to go forward and not
16 have four, five, and six, seven parties. Unless
17 somebody files, you know, intervention by today
18 and gets it approved, which is the deadline.

19 But we're at a distinct disadvantage,
20 and I think staff is, as well, by being surprised
21 by new parties and new issues. This process has
22 been going on a very long time.

23 PRESIDING MEMBER GEESMAN: Have you
24 experienced that proliferation of parties in any
25 of the cases that you and I have been on together?

1 MR. GALATI: There was a -- I think that
2 the Tesla project was one in which CARE, the
3 group, and Mr. Sarvey, the group -- individual.
4 And while it didn't proliferate, it appears to
5 have been proliferating in this case.

6 It also tried to happen in Blythe I. I
7 see CARE witnesses; I see Bob Sarvey as a witness
8 for Ms. Garnica. And I am worried that Mr. Sarvey
9 and Mr. Boyd may get the impression they can
10 behave the way they did in Tesla, when they were
11 parties.

12 If they are witnesses, that is fine.
13 We'll take their testimony. But I don't expect
14 that they should have the ability to object,
15 cross-examine, do any of the kinds of things that
16 are reserved for an intervenor. And the
17 intervenor in this case is Ms. Garnica.

18 And she was the intervenor in Blythe I,
19 and she does know the process. She is supported
20 by the Public Adviser's Office. And we welcome
21 her participation.

22 But I just didn't want it to turn into
23 coordination with four or five parties when there
24 aren't four or five parties in this case.

25 HEARING OFFICER SHEAN: Let me just say

1 I think the Committee's objective with respect to
2 her involvement is to assure that she has the
3 right to present testimony in a timely way in
4 accordance with the orders of the Committee. And
5 has the opportunity to cross-examine witnesses.

6 And, among other things, the Committee
7 has the responsibility to assure a clear record --

8 TELECONFERENCE SPEAKER: You can
9 continue holding, or for more options press the
10 pound key.

11 HEARING OFFICER SHEAN: -- has a clear
12 record. So if issues with respect to translation
13 of Spanish and English or other things like that
14 come up, I would say that you could probably rest
15 assured that the Committee, if Ms. Garnica needs a
16 translator or someone who is versed in technical
17 English in an area that she wishes to cross-
18 examine, that the Committee would allow a
19 substitute for the purposes of insuring the
20 clarity of the record.

21 But beyond that probably very limited.

22 MR. GALATI: And we would agree with
23 that approach. Thank you.

24 HEARING OFFICER SHEAN: All right.
25 Let's talk about -- let me just ask if there's

1 anyone on the phone who wishes to make a comment
2 with respect to any of the list of topics that
3 we've discussed here this morning.

4 MR. NELSON: Les Nelson, City Manager of
5 Blythe. Mr. Chair, are you eventually going to
6 talk about the evidentiary --

7 TELECONFERENCE SPEAKER: You can
8 continue holding, or for more options press the
9 pound key.

10 MR. NELSON: Are you going to speak to
11 the evidentiary hearing dates?

12 HEARING OFFICER SHEAN: That's next.

13 MR. NELSON: Okay, thank you.

14 HEARING OFFICER SHEAN: It's just we
15 want to wrap this portion up.

16 Mr. Wolff, did you want to say anything?

17 MR. WOLFF: No. I've got the
18 information I need.

19 HEARING OFFICER SHEAN: All right. Then
20 we will move to the idea of the hearing date and
21 when that ought to be. I think we are committed
22 to coming down to the City of Blythe so that we
23 can toast ourselves as much as possible.

24 Let me indicate my preference, and maybe
25 it need not be written into the notice of the

1 proceeding, that we have a somewhat informal dress
2 code --

3 (Laughter.)

4 MR. NELSON: Bathing suits will be fine.

5 HEARING OFFICER SHEAN: Okay, bathing
6 suits -- the applicant will be on the left side of
7 the diving board and the staff on the right --

8 (Laughter.)

9 HEARING OFFICER SHEAN: And so. I
10 recall we had discussed the possibility of having
11 the evidentiary hearings on August 1 and 2.

12 TELECONFERENCE SPEAKER: You can
13 continue holding, or for more options press the
14 pound key.

15 HEARING OFFICER SHEAN: We're about to
16 press you, ma'am.

17 (Laughter.)

18 HEARING OFFICER SHEAN: But we've had an
19 email request from the City, I thought it was, for
20 alternate dates. So, can the City sort of update
21 us on that? Do you --

22 MR. NELSON: Yes. Thank you very much.
23 First, thank you for not doing it the last week of
24 July. Virtually the City Council, City Manager,
25 Assistant City Manager will be at the League of

1 California Cities annual meeting the last week of
2 July.

3 The tentative date is August 1st and
4 2nd, and at the risk of overstepping, I would ask
5 the Commission to consider either the week of
6 August the 8th, the week of August the 15th, or
7 the week of August the 22nd.

8 An impossible date was the last week of
9 July. Next-to-impossible is the first week of
10 August. However, if everybody else is scheduled,
11 we would try to comply. But we would like it --

12 TELECONFERENCE SPEAKER: You can
13 continue holding, or for more options press the
14 pound key.

15 MR. NELSON: -- either the second, third
16 or fourth week in August. September the weather
17 is much nicer.

18 (Laughter.)

19 PRESIDING MEMBER GEESMAN: Well, let me
20 say, and I'm going to need to review my calendar,
21 I have a number of hearings in August. And I am
22 quite mindful of the applicant's interest in being
23 able to participate in the various requests for
24 offers that the California utilities are currently
25 conducting.

1 I also am continually concerned about
2 the state's precarious supply situation, as we get
3 out into the latter years of this decade.

4 So I don't want to see a slippage here,
5 but having said that, I will review my calendar
6 and see if there are any dates in August that
7 work. Preliminarily, though, I think we probably
8 ought to look at the 1st and 2nd as the most
9 likely.

10 TELECONFERENCE SPEAKER: You can
11 continue holding, or for more options --

12 PRESIDING MEMBER GEESMAN: From having
13 listened --

14 TELECONFERENCE SPEAKER: -- press the
15 pound key.

16 PRESIDING MEMBER GEESMAN: From having
17 listened to both the applicant and the staff this
18 morning, I think we're going to need two full days
19 in Blythe. Because I think that the issues that
20 have been raised have a primarily local impact,
21 and I would expect to the extent that members of
22 the local community are interested in the subject,
23 that we ought to have the hearings there.

24 I would also envision the first day of
25 hearing we should plan on going into the evening.

1 As it currently stands, I do have another
2 obligation on the 3rd. So what I would suggest is
3 that we intend to commence at 9:00 the morning of
4 the 1st. That means people are going to have to
5 travel on Sunday, the 31st. That we intend to go
6 late into the evening on the 1st; and that we --

7 TELECONFERENCE SPEAKER: You can
8 continue holding, or for more options press the
9 pound key.

10 PRESIDING MEMBER GEESMAN: -- that we
11 wrap up late in the afternoon or perhaps at the
12 close of the business day on the 2nd, assuming all
13 of that time is necessary.

14 And I'm going to have to check flight
15 schedules because I do need to be back in northern
16 California bright and early on the 3rd.

17 So, I'll review my calendar and
18 determine if there are two other dates back-to-
19 back in August that would work for coming down to
20 Blythe. I would suggest to both the staff and the
21 applicant that if it turns out that we need a
22 third day, that we plan on doing that one in
23 Sacramento. That that can be a cleanup day, if
24 necessary.

25 But hopefully we can resolve this in two

1 days of evidentiary hearings. And I'd like to
2 conduct a pretty quick briefing schedule, as well.

3 MR. GALATI: On behalf of the applicant,
4 Commissioner, we appreciate that. And in light of
5 the way that the hearings are going to go with not
6 a lot of recapping of the written testimony on
7 direct, and focusing on rebuttal testimony, and
8 then cross-examination, we're very confident that
9 we can finish this in two days. We don't believe
10 that there would necessarily need to be a third
11 day.

12 The three hours I had for water
13 resources in my mind has, from a direct
14 standpoint, is certainly down to an hour, if that.
15 So I'm confident that we can complete those in two
16 days.

17 HEARING OFFICER SHEAN: Let me just ask
18 you a question. How do you get to that number
19 with respect to your direct on water?

20 MR. GALATI: And, again, I think in
21 terms of Committee's questions being part of
22 direct. So in allowing time for me to produce
23 rebuttal testimony and highlight the areas of the
24 testimony, I think that's a half-hour or 45-minute
25 exercise. And that rest of it is done in writing.

1 And the rest of it would be answering questions
2 from the Committee.

3 Then, of course, allowing the parties to
4 conduct cross-examination, as well.

5 HEARING OFFICER SHEAN: Okay. I think
6 everyone should expect to be fairly tightly
7 overseen, noncumulative, so that we get the
8 essential information and not a lot of either
9 fluff or chaff.

10 All right, are there scheduling
11 considerations from any other party?

12 MS. DeCARLO: There is from staff. The
13 1st and the 2nd work wonderfully for staff.
14 Unfortunately, when we get into the middle of
15 August we do have some staff that can't make it.

16 The week of the 11th, 12th, one of our
17 witnesses for traffic and transportation won't be
18 available. We may be able to proceed without him;
19 we'd prefer not to.

20 And then at the end of the month we have
21 staff that are absolutely critical to our
22 testimony that won't be available.

23 HEARING OFFICER SHEAN: Okay. Anything
24 from the applicant that's a timing consideration?

25 MR. GALATI: I think we'd prefer the 1st

1 and 2nd, as well. And the alternative week would
2 be the week of the 15th.

3 HEARING OFFICER SHEAN: All right.
4 Well, I think for the City, you know, you're
5 coming probably to understand how, and once we
6 announce dates everybody tends to make it work
7 around those. And then by virtue of doing that,
8 it works less well around other dates.

9 So right now it looks as if the strong
10 tilt is to the 1st and 2nd.

11 MR. NELSON: And the City recognizes
12 that and appreciates the consideration. And,
13 again, we've already exercised our one time, and
14 if it's the 1st and 2nd we'll figure out a way to
15 live with that.

16 HEARING OFFICER SHEAN: Appreciate that.
17 All right, is there any other matter that needs to
18 come before the Committee with respect to the
19 matters to be heard at the prehearing conference?

20 MS. DeCARLO: Just scheduling concern as
21 to when the applicant and intervenors will be
22 directed to provide their direct written
23 testimony.

24 HEARING OFFICER SHEAN: Ordinarily it's
25 ten days or 10 to 12 days prior to the hearing.

1 MR. GALATI: We asked for July 15th.
2 Staff has asked for July 5th, which is next
3 Tuesday. We can have our testimony filed by July
4 15th.

5 HEARING OFFICER SHEAN: All right.

6 MS. DeCARLO: I would just state that
7 staff is really busy right now working on IEPR.
8 It's going to be really difficult for us to turn
9 around our rebuttal testimony and be prepared for
10 hearings in two weeks, ten business days.

11 MR. GALATI: We would waive any
12 requirement to have rebuttal testimony given to us
13 more than a couple of days before the hearing.
14 And, again, what we're really looking for is
15 identification and copies of exhibits that they
16 plan to rely upon that we have not seen.

17 So, an exhibit list would be acceptable.
18 And copies of any new exhibits.

19 MS. DeCARLO: And I'm sorry, I didn't
20 intend to mean that we would be providing written
21 rebuttal testimony. We certainly don't have time
22 for that. But even just the time it would take to
23 read through the applicant's proposed testimony,
24 which I would imagine would be several hundred
25 pages long, hundred pages. It's definitely not

1 going to be short.

2 They've had a month and a half for the
3 bulk of our testimony to read it and be prepared
4 to voice their position. So it's a little
5 disconcerting that we would only have two weeks to
6 both read their testimony and prepare for hearings
7 at the same time.

8 HEARING OFFICER SHEAN: Let us take the
9 matter under consideration. We're likely, given
10 the fact we have not communicated with Ms.
11 Garnica, and we'll use the Public Adviser's Office
12 for that, is perhaps, given the less technical and
13 less bulky likely nature of whatever it is she's
14 going to present of separating the two, but in any
15 case it won't be less than ten days, which is what
16 is provided for in the regulations.

17 MS. DeCARLO: Ten business days?

18 HEARING OFFICER SHEAN: Yeah, I think --
19 yes, ten days -- no, it's ten calendar days is
20 what I understand. You would like it as ten
21 business days?

22 MR. GALATI: July 15th provides for 14
23 days.

24 HEARING OFFICER SHEAN: Okay. Let us
25 see what we can figure out.

1 PRESIDING MEMBER GEESMAN: And ten
2 business days.

3 MR. GALATI: Correct. And we would, as
4 always, provide our testimony electronically to
5 staff and the Committee, as opposed to waiting for
6 it to come in the mail.

7 HEARING OFFICER SHEAN: Okay. We'll get
8 this out either Friday or Monday. And we'll get
9 it to you electronically.

10 Are there members of the public who are
11 present who would like to make a comment, or who
12 are on the phone?

13 Hearing none, then, what we'd like to do
14 is rather than, quote, adjourn this, is to turn
15 the matter over to the staff and the applicant to
16 allow a workshop-type proceeding to continue in
17 our absence.

18 And ask that if you do reach -- whatever
19 substantive agreements you reach that may affect
20 the Committee with regard to the preparation of
21 the hearing order, that you attempt to inform us
22 of that reasonably quickly.

23 MR. GALATI: Yeah, would email be
24 sufficient for us --

25 HEARING OFFICER SHEAN: Email is quite

1 fine.

2 MS. DeCARLO: And I just have one
3 question with regard to the order. Will the
4 Committee be directing Ms. Garnica to clearly
5 identify those issues where she wants to require
6 staff witnesses present?

7 HEARING OFFICER SHEAN: Since she has
8 not stated through the avenue that we have
9 available to her that she requested a particular
10 witness present, right now the only opportunity, I
11 believe, that is going to be afforded her is to
12 prepare and file written testimony.

13 MS. DeCARLO: Okay.

14 MR. WOLFE: This is Pat Wolfe from the
15 Airport. I got a request. The nice lady there
16 from the staff, could you spell her name for me?

17 HEARING OFFICER SHEAN: This is Ms. Lisa
18 DeCarlo, D-e-C-a-r-l-o.

19 MR. WOLFE: Okay, how about a telephone
20 number?

21 HEARING OFFICER SHEAN: How about we
22 give that to you -- let me just indicate you can
23 find that on the notice of this proceedings.

24 MR. WOLFE: Okay.

25 HEARING OFFICER SHEAN: I think either

1 through Mr. Pfanner, who is the Staff's Project
2 Manager, --

3 MR. WOLFE: Oh, okay.

4 HEARING OFFICER SHEAN: So, if you
5 contact him, he will be able to forward you to
6 anybody. Or you can contact me; my name appears,
7 Garret Shean, on the notice. So we'll get you
8 whatever access to the Commission people that you
9 think you need.

10 MR. WOLFE: Okay, that'll be fine.

11 HEARING OFFICER SHEAN: Certainly.

12 MR. WOLFE: You'll notify us by Monday
13 when the actual date is, and our filing dates and
14 stuff?

15 HEARING OFFICER SHEAN: Yes. And if you
16 -- actually if you have an email address we can
17 add you to our electronic service list.

18 MR. WOLFE: I'm on it.

19 HEARING OFFICER SHEAN: Are you? All
20 right.

21 MR. WOLFE: I'm already on it.

22 HEARING OFFICER SHEAN: Good. Anything
23 further from anybody?

24 All right, then the Committee is done,
25 and we thank you for your participation.

1 MR. WOLFE: We thank you, as well --

2 MR. GALATI: Thank you.

3 MS. DeCARLO: Thank you.

4 MR. NELSON: Thank you.

5 UNIDENTIFIED SPEAKER: Why don't we take
6 a short break and then we'll go into the workshop.
7 About ten minutes?

8 (Whereupon, at 10:50 a.m., the
9 prehearing conference was adjourned into
10 the Staff Workshop, to be adjourned sine
11 die.)

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CERTIFICATE OF REPORTER

I, CHRISTOPHER LOVERRO, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of July, 2005.

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